

7535-01-U

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 704**

**RIN 3133-AD58**

**Corporate Credit Unions, Technical Corrections**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** NCUA is issuing technical corrections to its corporate credit union rule, published in the Federal Register of October 20, 2010. The amendments: (1) correct the definition of collateralized debt obligation (CDO) in §704.2; (2) correct the list of investments exempt from the single obligor limits and credit rating requirements in §704.6; and (3) correct a date contained in Model Form H of Appendix A to Part 704.

**DATES:** Effective on January 18, 2011. Comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

NCUA website:

<http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx>.

Follow the instructions for submitting comments.

E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on “Interim Final Rulemaking for Part 704--Corporate Credit Unions” in the e-mail subject line.

Fax: (703) 518-6319. Use the subject line described above for e-mail.

Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

Hand Delivery/Courier: Same as mail address.

**PUBLIC INSPECTION:** All public comments are available on the agency’s website at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Wirick, Staff Attorney, Office of General Counsel, at the address above or telephone (703) 518-6540; or David Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone (703) 518-6640.

## **SUPPLEMENTARY INFORMATION**

### **A. Background**

The NCUA published a final rule in the Federal Register of October 20, 2010, at 75 FR 64786, containing extensive revisions to its corporate credit union rule, 12 CFR part

704. The final revisions require three technical corrections. The following corrections reflect the intent of the original revisions as described in the preamble to the October 20, 2010 rulemaking.

## **B. Corrections**

### §704.2 Definition of “collateralized debt obligation”

The final revisions to part 704 prohibited corporate credit unions (corporates) from purchasing certain overly complex or leveraged investments, including collateralized debt obligations (CDOs). 75 FR 64786, 64793 (October 20, 2010). These prohibitions were intended to protect the corporates from the potential for excessive investment losses. 74 FR 65210, 65237 (December 9, 2009)(preamble to proposed part 704 revisions). The proposed (and final) definition of CDO, however, was overly broad, in that it inadvertently included particular investments that did not -- when subject to the other credit risk and asset liability management limitations of part 704 -- present the risk of excessive losses.

This interim final rule amends the CDO definition to ensure the following are not prohibited: commercial mortgage backed securities; securities collateralized by Agency mortgage-backed securities (Agency MBS); and securities that are fully guaranteed as to principal and interest by the United States Government and its agencies and government sponsored enterprises.

The final rulemaking published October 20, 2010, revises §704.2 twice. The first §704.2 revision is effective January 18, 2011, and the second revision is effective October 20, 2011. This technical correction to the definition of “collateralized debt obligation” must be included in both revisions. Accordingly, the rule text below has two separate instructions for the CDO definition.

## Paragraph 704.6(b) Exemptions to §704.6

Section 704.6 generally requires corporate investments meet certain single obligor concentration limits, sector concentration limits, and credit rating requirements.

Paragraph 704.6(b) exempts certain investments, including investments generally issued by or guaranteed by the U.S. Government or its agencies or sponsored enterprises, from the requirements of §704.6. As stated in the preamble to the recent corporate rule revisions, however, the Board did not intend for this exemption to apply to agency MBS in the context of sector limits. 75 FR 64786, 64806 (Oct. 20, 2010)(discussing paragraph 704.6(d)(1)(i)). As drafted, however, not only the sector limits apply to agency MBS, but the other requirements, including single obligor limits and credit rating requirements, inadvertently apply to agency MBS. This correction clarifies the list of exemptions in §704.6(b) to make clear that Agency MBS are subject to the sector concentration limits in 704.6(d) but not the other requirements of §704.6.

## Appendix A, Model Form H

The rule as published included an incorrect date instruction on Model Form H in Appendix A. *Id.* at 64851. Model Form H included introductory text indicating that the form was for use before October 20, 2011. In fact, because Model Form H deals with perpetual contributed capital, the form should be used only on and after October 20, 2011. The correction replaces the phrase “before” with the phrase “on or after.”

### **C. Interim Final Rule**

NCUA is issuing this rulemaking as an interim final rule effective as of January 18, 2011, which is the date the relevant provisions of the previous corporate rulemaking will take effect. The Administrative Procedure Act (APA), 5 U.S.C. 553, generally requires that before a rulemaking can be finalized it must first be published as a notice of proposed rulemaking with the opportunity for public comment, unless the agency for

good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. In this regard, NCUA believes good cause exists for issuing these clarifying amendments as an interim final rule, in order to coordinate with the effective date of the recent final revisions as well as eliminate as soon as possible any confusion resulting from preamble language that is inconsistent with, or makes ambiguous, the associated regulatory text. To that extent, NCUA believes issuing this rulemaking as an interim final rule is in the public interest. NCUA does not anticipate comments on these changes and so is allowing only a 30-day comment period.

#### **D. Regulatory Procedures**

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). The interim final rule applies only to corporate credit unions, all of which have assets well in excess of \$10 million. Accordingly, the interim final rule will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

##### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104-121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. While NCUA views these clarifying amendments as minor, the formal determination by the Office of Information and Regulatory Affairs is pending.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. These technical corrections do not impose any new paperwork burden.

### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

The interim final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

### The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this interim final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 18, 2010.

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Mary F. Rupp  
Secretary of the Board

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 704 as set forth below:

**PART 704--CORPORATE CREDIT UNIONS**

1. The authority citation for part 704 continues to read as follows:

**Authority:** 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

2. Revise the definition of “collateralized debt obligation” in §704.2 to read as follows:

**§704.2 Definitions**

\* \* \* \* \*

Collateralized debt obligation (CDO) means a debt security collateralized by mortgage-backed securities, other asset-backed securities, or corporate obligations in the form of nonmortgage loans or debt. For purposes of Part 704, the term CDO does not include: (1) senior tranches of Re-REMIC's consisting of senior mortgage-and asset-backed securities; (2) any security that is fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises; or (3) any security collateralized by other securities where all the underlying securities are fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises.

\* \* \* \* \*

3. Effective October 20, 2011, revise the definition of "collateralized debt obligation" in §704.2 to read as follows:

#### **§704.2 Definitions**

\* \* \* \* \*

Collateralized debt obligation (CDO) means a debt security collateralized by mortgage-backed securities, other asset-backed securities, or corporate obligations in the form of nonmortgage loans or debt. For purposes of Part 704, the term CDO does not include: (1) senior tranches of Re-REMIC's consisting of senior mortgage-and asset-backed securities; (2) any security that is fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises; or (3) any security collateralized by other securities where all the underlying securities are fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises.

\* \* \* \* \*

4. Revise paragraph (b) in §704.6 to read as follows:

**§704.6 Credit risk management.**

\* \* \* \* \*

(b) Exemption. The limitations and requirements of this section do not apply to certain assets, whether or not considered investments under this part, including fixed assets, individual loans and loan participation interests, investments in CUSOs, investments that are issued or fully guaranteed as to principal and interest by the U.S. government or its agencies or its sponsored enterprises (but not exempting, for purposes of paragraph (d) of this section, mortgage backed securities), investments that are fully insured or guaranteed (including accumulated dividends and interest) by the NCUSIF or the Federal Deposit Insurance Corporation, and settlement funds in federally insured depository institutions.

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5. Revise the introductory note in Model Form H, Appendix A, to read as follows:

**APPENDIX A TO PART 704 – Capital Prioritization and Model Forms**

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MODEL FORM H

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[NOTE: This form is for use on or after October 20, 2011 in the circumstances where the credit union has determined THAT IT WILL give newly issued capital priority over

older capital as described in Part I of this Appendix. Also, capital previously issued under the nomenclature “paid-in capital” is considered perpetual contributed capital].

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